

IN THE UNITED STATES DISTRICT COURT  
FOR THE SOUTHERN DISTRICT OF GEORGIA  
BRUNSWICK DIVISION

FILED  
U.S. DISTRICT COURT  
SOUTHERN DISTRICT OF GEORGIA  
AT BRUNSWICK

2006 DEC 12 A 10:52

REY DAVID VARGAS and  
RICHARD WAYNE BIESTER,

Petitioners,

vs.

CIVIL ACTION NO.: CV206-081

JAMES L. LANIER, Warden, Wayne  
State Prison; MILTON E. NIX, Chairman,  
State Board of Pardons and Paroles,  
and JAMES E. DONALD, Commissioner,

Respondents.

ORDER

After an independent review of the record, the Court concurs with the Magistrate Judge's Report and Recommendation, to which Objections have been filed. In their Objections, Vargas and Biester ("Petitioners") assert that their petition states a claim for federal habeas relief. Specifically, Petitioners assert that the case of Jackson v. State Board of Pardons and Paroles, Civil No. 2:01-CV-068-WCO (N.D. Ga. May 29, 2002), provides support for their claims. In Jackson, the Board of Pardons and Paroles actually applied the 90% time-served policy to Jackson, and the Board applied this policy retroactively to him, as Jackson committed his offense prior to 1998. It was noted that the Board informed Jackson that, pursuant to the 90% time-served policy, Jackson must serve 90% of his sentence before the Board would consider him for parole. (Doc. No. 22, Ex. C, p. 3.) In contrast, the Magistrate Judge, in the case *sub judice*, correctly noted that there

is no evidence that this 90% time-served policy was applied to Petitioners. (Doc. No. 33, p. 3.) In addition, Vargas has been considered for parole on several occasions; Biester was informed that, given the circumstances of his crime, he would be released on his maximum release date.

Petitioners contend that the Magistrate Judge erred in recommending that their equal protection and due process claims be dismissed because these claims are not cognizable in an action filed pursuant to 28 U.S.C. § 2241. Petitioners asserts that a section 2241 petition is the only avenue of relief available to them. Petitioners' contentions in this regard reveal their misunderstanding of the applicable law. The Magistrate Judge's Report reflects a proper statement of the law.

Petitioners' Objections are without merit. The Report and Recommendation of the Magistrate Judge is adopted as the opinion of the Court. Respondent's Motion to Dismiss (Doc. No. 24) is **GRANTED**. The petition for writ of habeas corpus, filed by Vargas and Biester pursuant to 28 U.S.C. § 2241, is **DISMISSED**. The Clerk of Court is hereby authorized and directed to enter the appropriate Judgment of Dismissal.

SO ORDERED, this 12 day of December, 2006.

  
\_\_\_\_\_  
JUDGE, UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF GEORGIA